IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10602 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI DAYALJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

Heard learned advocate Mr. H. R. Prajapati for the petitioner and learned A.G. P. Mr. K. T. Dave for the respondents Nos. 1, 2 and 3.

1. The detention order dated 11.4.1999 passed by the

respondent No. 2, District Magistrate, Banaskantha, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present proceedings under Article 226 of the Constitution of India.

2. The grounds of detention served upon the detenu under Section 9(1) of the "PASA", copy of which is produced at Annexure - "B" interalia indicate that the petitoner is involved in six criminal cases registered at Diyodar Police Station and Bhildi Police Station in between 12.5.1997 to 1.8.1998. The Criminal cases are registered for the alleged offences made punishable under Sections 457, 380 read with 114 of IPC and/or 461, 380 read with section 114 of IPC. That all cases are pending investigation.

3. That on the basis of above stated material, the respondent No. 2 as Detaining Authority has come to the conclusion that the detenu is a "dangerous person " within the meaning of Section 2(c) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activities, and thereby, in order to prevent the petitioner from continuing his such activities, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that the impugned order is bad in law on account of absence of live link between alleged anti-social activities and the act of passing of the detention order. That the last case registered against the petitioner appears to be of dated 1.8.1998. That as per the documents supplied, the petitioner was arrested on 4.1.1999 in respect to Criminal case No. 153/98. That in the last matter, petitioner was released on bail on 12.1.1999. That after 12.1.1999 no facts are stated in the grounds of detention suggesting involvement of the petitioner in any of the anti-social activities as a dangerous person. That detention order is passed on 11.4.1999 without explaining the delay caused in passing the order of detention in the grounds of detention.

5. In the matter of Pradip Nilkanth Paturkar Vs Ramamurthi and others, reported vide AIR, 1994, SC, 656, the Hon'ble Supreme Court has elaborated the proposition of law that if the delay in passing detention order from the date of last registered case on which, the detention order is based is not satisfactorily explained by the

Detaining Authority, the order can not be said to be valid and deserves to be struck down.

That this Court in the matter of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported vide 1997 (1), GLH, 381 has also reiterated the said proposition, after referring several authorities of Supreme Court.

6. In the instant case, despite due service of Rule, none of the respondents has filed any affidavit. That scrutiny of papers of grounds of detention produced at Annexure - "B", suggest that no where the Detaining Authority has disclosed any fact to infer the explanation so as the delay from 12.1.1999 to 11.4.1999 could be justified for a reasonable ground. That in the absence of any reasonable explanation justifying inordinate delay, the impugned order can not be sustained.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide, the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11.4.1999 passed by the respondent No. 2 against the petitioner is hereby quashed and set aside. The petitioner Ishwarsingh Dayalji Thakore, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

Date : 22.02.2000. (A. K. Trivedi, J.)

PALLAV.